

Report on the

# **Alabama Board of Examiners of Mine Personnel**

**Birmingham, Alabama**



## **Department of Examiners of Public Accounts**

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*Ronald L. Jones, Chief Examiner*



# State of Alabama

Department of

## Examiners of Public Accounts

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August 24, 2011

Senator Paul Bussman  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Bussman,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Examiners of Mine Personnel** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Examiners of Mine Personnel**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,



Ronald L. Jones  
Chief Examiner

Examiner  
Glenn A. Davis



## CONTENTS

<b>PROFILE.....</b>	<b>1</b>
Purpose/Authority .....	1
Board Characteristics.....	1
Operations .....	2
Financial .....	3
<b>SIGNIFICANT ISSUES .....</b>	<b>4</b>
<b>STATUS OF PRIOR SIGNIFICANT ISSUES .....</b>	<b>4</b>
<b>ORGANIZATION .....</b>	<b>5</b>
<b>PERSONNEL .....</b>	<b>6</b>
<b>COMPLAINT HANDLING.....</b>	<b>6</b>
<b>REGULATION IN CONJUNCTION WITH OTHER ENTITIES .....</b>	<b>8</b>
<b>SMART Governing.....</b>	<b>8</b>
<b>FINANCIAL INFORMATION .....</b>	<b>9</b>
Schedule of Fees .....	9
Collections vs. Expenses - Chart .....	9
<b>QUESTIONNAIRES .....</b>	<b>10</b>
Board Member Questionnaire .....	10
Certificate Holder Questionnaire.....	13
Complainant Questionnaire .....	17
<b>APPENDICES .....</b>	<b>18</b>
Statutory Authority .....	18
Board Members .....	22
<b>BOARD RESPONSE TO SIGNIFICANT ISSUES.....</b>	<b>24</b>

# **PROFILE**

## **Purpose/Authority**

The Board of Examiners of Mine Personnel examines and certifies coal mine foremen and fire bosses.

A mine foreman is the person charged with the responsibility of the general supervision of the underground workings of a mine and the persons employed therein. In certain states, the mine foreman is designated as the mine manager. A fire boss is a person employed at a mine or state certified official, responsible for examining a mine for dangers, particularly explosive, poisonous or suffocating gases. Usually the fire boss is the first person to enter a mine, to verify its safety, before a shift crew enters. Both mine foremen and fire bosses must hold a valid certificate of qualification issued by action of the Board of Mine Examiners.

Additionally, the board receives and investigates complaints, issues written reprimands and revokes certificates for cause. The board operates under the ***Code of Alabama 1975***, Sections 25-9-8 through 25-9-18. Federal law requires that fire bosses and mine foremen must be certified by the states in which they mine. In the absence of such certification, the federal government is authorized to certify. The board's administrative functions are performed by employees of the Mine Safety and Inspection Section of the Mining and Reclamation Division of the Department of Industrial Relations.

## **Board Characteristics**

<b>Members and Selection</b>	Eight (8), appointed by the governor.  <b><i>Code of Alabama 1975, Section 25-9-9</i></b>
<b>Term</b>	3-year, staggered terms with no board member serving more than two consecutive terms.  <b><i>Code of Alabama 1975, Section 25-9-9</i></b>
<b>Qualifications</b>	Each must hold an Alabama mine foreman certificate.  <ul style="list-style-type: none"><li>• The chief/head mine inspector of the Mine Safety and Inspection Division of the Department of Industrial Relations (Ex officio)</li><li>• Three active practical miners</li><li>• Three operators of coal mines</li><li>• One practicing mining engineer</li></ul> <b><i>Code of Alabama 1975, Section 25-9-9</i></b>

<b>Racial Representation</b>	No statutory requirement. No minority race representation on the board.																									
<b>Consumer Representation</b>	No statutory requirement. No consumer representation on the board.																									
<b>Geographic Representation</b>	No statutory requirement.																									
<b>Other Representation</b>	No Statutory Requirement																									
<b>Compensation</b>	Members other than the ex-officio member receive \$10 per day compensation for each day’s attendance at board meetings. Members are also entitled to the same per diem and travel allowance provided by law for state employees for each day's attendance at meetings of the board.  <i>Code of Alabama 1975, Section 25-9-9</i>																									
<b><u>Operations</u></b>																										
<b>Administration</b>	Administration of the operations of the board is among the duties of the Department of Industrial Relations, Mining and Reclamation Division (Michael Skates, Director) and further of the Mine Safety and Inspection Section of that division (Larry McCarty, Chief Inspector).																									
<b>Location</b>	Department of Industrial Relations Mining and Reclamation Division 649 Monroe Street Montgomery, AL 36131  Mine Safety and Inspection Section 11 West Oxmoor Rd. Suite 201 Birmingham, AL 35209 Office Hours: 7:00 AM – 4:00 PM Monday - Friday																									
<b>Examinations</b>	Given twice a year in April and October. Examinations are held at Beville State Community College in Sumiton, AL. The three-day examination is prepared, proctored and graded by the board. <table><tr><td><b>Fiscal Year</b></td><td><b>Examined</b></td><td><b>Passed</b></td><td><b>Failed</b></td><td><b>Pass Rate</b></td></tr><tr><td>2006-2007</td><td>51</td><td>41</td><td>10</td><td>80.39%</td></tr><tr><td>2007-2008</td><td>77</td><td>67</td><td>10</td><td>87.01%</td></tr><tr><td>2008-2009</td><td>84</td><td>72</td><td>12</td><td>85.71%</td></tr><tr><td>2009-2010</td><td>96</td><td>79</td><td>17</td><td>82.29%</td></tr></table>	<b>Fiscal Year</b>	<b>Examined</b>	<b>Passed</b>	<b>Failed</b>	<b>Pass Rate</b>	2006-2007	51	41	10	80.39%	2007-2008	77	67	10	87.01%	2008-2009	84	72	12	85.71%	2009-2010	96	79	17	82.29%
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<b>Licensees</b>	<p>Certified Mine Foreman 6,935</p> <p>Certified Fire Boss 781</p> <p>As of October 31, 2010</p>
<b>Renewals</b>	<p>None - Certificates remain in effect until revoked, cancelled or voluntarily surrendered. There is no provision for renewal.</p> <p><i>Code of Alabama 1975, Section 25-9-15</i></p>
<b>Reciprocity</b>	No statutory authority
<b>Continuing Education</b>	No statutory requirement
<b>Employees</b>	Larry McCarty, Chief Mine Safety and Inspection, and Susan Lollar, ASA III, both full-time classified merit system employees of the Mine Safety Section of the Department of Industrial Relations, work on board related activities approximately one month, twice a year.
<b>Legal Counsel</b>	Legal counsel is provided by the Department of Industrial Relations' staff attorney, Stephen McCormick.
<b>Subpoena Power</b>	None
<b>Internet Presence</b>	None. The Board of Examiners of Mine Personnel is a part of the Mine Safety and Inspection Section of the Mining And Reclamation Division of the Department of Industrial Relations. The Mine Safety & Inspections Section is represented on the Department of Industrial Relations Internet website. Reference to the Board of Examiners of Mine Personnel currently appears only in the included statement, "Mine foreman and fire boss certifications are administered through the Board of Examiners of Mine Personnel and production records are kept for coal and other minerals mined in Alabama" as a part of the description of the Mine Safety and Inspection Section. The board's administrative rules are posted as a part of the administrative rules of the Department of Industrial Relations.
<b>Attended Board Member Training</b>	No one representing the board or employed on the board's behalf has attended board member training.
<b><u>Financial</u></b>	
<b>Source of Funds</b>	<p>General Fund appropriations to the Department of Industrial Relations for mine safety inspections.*</p> <p>*Fees collected by the board are deposited into the General Fund and are not available for use by the board.</p>



<b>State Treasury</b>	Yes - Operations are funded through a Department of Industrial Relations' General Fund Account in the State Treasury
<b>Unused Funds</b>	Revert to the General Fund at year end.

## **SIGNIFICANT ISSUES**

### **Significant Issue 2011-01**

**Board members believe Alabama law pertaining to the regulation of mine personnel is inadequate.** Three of seven (43%) of board members responding to our questionnaire stated that they do not feel Alabama law pertaining to the regulation of mine personnel is adequate. The board members stated that mine personnel laws in Alabama are outdated and have not been changed since 1949. The board members also stated the mine foreman and fire boss tests are identical; an upgrade from the lesser to the higher (fire boss to mine foreman) requires retaking the same test.

## **STATUS OF PRIOR SIGNIFICANT ISSUES**

### **Significant Issue 2008-02**

**The board's administrative rules do not include a description of acceptable conditions for the voluntary surrender of a certificate.** The *Code of Alabama 1975*, Section 25-9-15(c) states, "In addition to the reasons specified in subsection (b) for revocation of a certificate, a certificate holder may voluntarily surrender his or her certificate upon written request to the board for any reason acceptable to the board, and subsequent approval by the board. **Pursuant to administrative rule, the board shall specify those reasons that are acceptable to the board for the voluntary surrender of a certificate.**"

In a March 22, 2011 meeting with the Mining and Reclamation Division Director, the director stated that the board was in the process of promulgating an administrative rule to specify acceptable conditions for the voluntary surrender of a certificate. As of July 9, 2011, the board's administrative rules, as posted on the website of the Administrative Division of the Legislative Reference Service, and as posted in the administrative rules of the Department of Industrial Relations do not include a rule for this purpose.

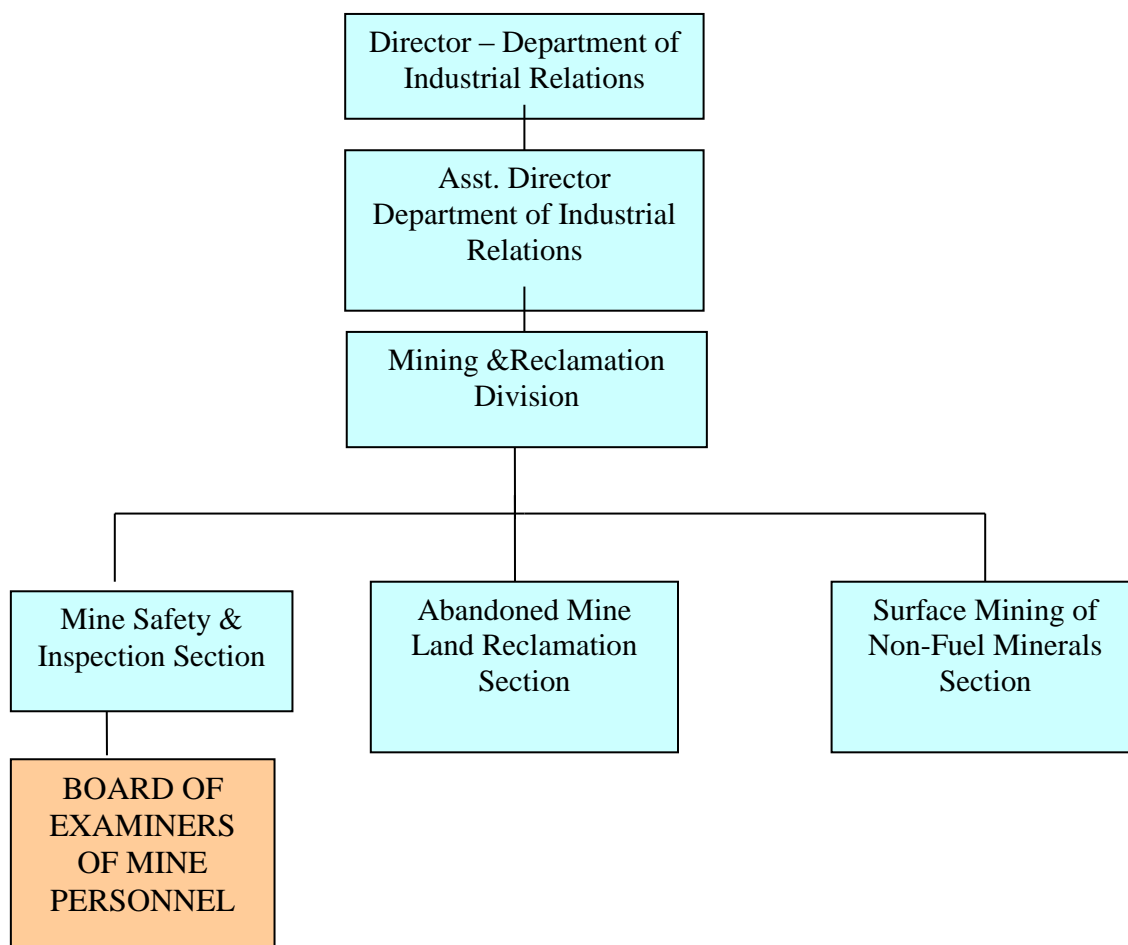
### **Significant Issue 2008-04**

**Certificate holders do not believe they are adequately informed.** Of the 13 certificate holders who responded to our questionnaire, 10 of the respondents stated they do not feel they are adequately informed of changes to, and interpretations of, board positions, policies, rules, and laws concerning the practice of mine foreman and fire bosses. Because there is no requirement for continued contact with the board beyond issuance of a certificate, addresses of certificate holders on file at the board will eventually become inaccurate and inadequate for notification by mail. The board has no Internet presence from which to distribute information. Of 100 questionnaires sent to fire boss and mine foreman certificate holders, 26 were returned to the Examiners of Public Accounts as undeliverable, and only 13 responded. Certificate holders' access to impending changes appears limited to review of the Administrative Monthly published by the Legislative Reference Service.

**Current Status** - Eleven of the fifteen certificate holders (73%) who responded to our questionnaire for this report stated that they do not feel they are adequately informed of changes to, and interpretations of board positions, policies, rules, and laws concerning the practice of mine foreman and fire bosses.

There remains no requirement for contact of certificate holders with the board after initial issuance of a certificate, and contact information for certificate holders on file at the board eventually becomes inaccurate and therefore inadequate for reliable notification. Also, the board continues to have no Internet presence from which to distribute information. Of 100 questionnaires sent to fire boss and mine foreman certificate holders, 19 were returned as undeliverable, and only 15 responded. Certificate holders' access to impending changes appears limited to review of the Administrative Monthly published by the Legislative Reference Service.

## **ORGANIZATION**



The Chief of the Mine Safety and Inspections Section, Larry McCarty, is the ex officio Chairman of the Board of Examiners of Mine Personnel.

## **PERSONNEL**

The Board of Examiners of Mine Personnel does not employ any personnel. All administrative functions are performed by employees of the Department of Industrial Relations, Mine Safety and Inspection Section. Two employees of the Mine Safety and Inspection Section work a minimal amount of time in preparation for board meetings; Larry McCarty, Chief of Mine Safety and Inspection; and Susan Lollar, ASA III.

## **COMPLAINT HANDLING**

The board follows its administrative rules concerning complaint resolution as stated in *Alabama Administrative Code* Section 480-3-7-.02

The board may issue an official written reprimand of any person certified by the board as a disciplinary measure for a first violation of any requirement.

In addition, for any subsequent violation or for any serious first violation, the certificate of any person may be cancelled or revoked by the board of examiners, whenever it shall be established to the satisfaction of the board that the holder of the certificate has become unworthy of official endorsement by reason of violation of this chapter, intemperate habits, manifest incapacity, abuse of authority, or for other causes satisfactory to the board. Any person against whom charges are made shall have an opportunity to be heard in his or her own behalf. He or she shall have at least 30 days' notice in writing of the charges by the ex officio chairman, and, if the holder of a certificate is convicted on the hearing of the charge of violating any part of this chapter, his or her certificate shall be revoked by the board. The director, after a thorough investigation, may suspend the holder pending a meeting of the board of examiners and its final action.

<b>Initiation of Complaint</b>	<p>Proceedings before the Board of Examiners are initiated by the filing of a complaint called a charge, which must be in writing and signed. The complaint must contain the name and address of the person against whom the charge is made and a detailed statement of the facts on which the charge is based.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(1)</i></p>
<b>Anonymous Complaints</b>	<p>The board does not accept anonymous complaints. Only written, signed complaints are accepted.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(1)</i></p>

<b>Investigation of Charges</b>	<p>The charge is filed with the Chief of the Safety and Inspection Section of the Mining and Reclamation Division of the Alabama Department of Industrial Relations.</p> <p>The Chief of the Safety and Inspection Section directs an inspector from the Division of Safety and Inspection to investigate the allegations and to submit a report to the board. The investigation of the charge must report on each allegation and must state whether the alleged activities were a hazard to the health or safety of the underground miners or were otherwise in violation of the Coal Mine Safety Laws of Alabama.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(2)</i></p>
<b>Evaluation of the Charge</b>	<p>After receiving the inspector's report, the board reviews the charges, the inspection report, and other information available to them to determine (1) whether the charges are supported by the inspection report, and (2) whether the charges, if taken as true, are a violation of the Alabama Coal Mine Laws.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(3)</i></p>
<b>Informal Disposition</b>	<p>If the board determines that the charges, or any part of them, are not supported by the available evidence, or that the charges do not state a violation of the Coal Mine Laws, the Board dismisses the charges, or any unfounded part of the charges.</p> <p>If the board determines that the charges, if taken as true, state a violation of the Alabama Coal Mining laws but the act or activity complained of does not merit revocation, cancellation or suspension of one's certificate, the board may reprimand in writing any or all the parties charged without a formal hearing, unless the reprimanded party or parties within ten (10) days after receipt of the written reprimand, request a formal hearing in writing.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(3)</i></p>
<b>Formal Hearings</b>	<p>If the board determines by simple majority that the charges merit revocation under the Alabama Coal Mine Laws, the board schedules a formal hearing.</p> <p>All charged parties must be given at least 30 day notice of the date of a formal hearing. The notice must include a copy of the charges on which the board will proceed. The notice must also include a statement of the procedures of the board and the rights of the charged party at the hearing.</p> <p>At the conclusion of the hearing, the board must meet to decide the charges, and a decision must be made within thirty (30) days. The decision is made by a simple majority of the board. The decision</p>

	<p>must be in writing and must be sent to all parties involved. The board must include in its decision its findings of fact and its conclusion. The decision must include the reasons for the board's determinations on all material issues.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(3)</i></p> <p><i>Alabama Administrative Code, 480-3-7-.02.(4)</i></p> <p><i>Alabama Administrative Code, 480-3-7-.02.(6)</i></p>
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### **Resolution of Complaints by Fiscal Year**

Year/Number Received		Year/Number Resolved					
		2007	2008	2009	2010	2011	Pending
2007	0	0	0	0	0	0	0
2008	1		1	0	0	0	0
2009	0			0	0	0	0
2010	1*				1	0	0

\*Through 3/25/2011 from Board of Mine Personnel Records

### **Resolution of Complaints by Elapsed Time**

According to the board's complaint records reviewed, the average time to resolve complaints was 26.5 days.

## **REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The Board of Examiners of Mine Personnel works in conjunction with both the federal Mine Safety and Health Administration (MSHA) and the Alabama Department of Industrial Relations, Division of Mine Safety and Inspection to insure the health and safety of miners.

The Board of Examiners of Mine Personnel only certifies mine foremen and fire bosses and does not directly regulate the licensees after certification. However, the board does address complaints against its licensees.

## **SMART GOVERNING**

Since the board's functions are administered by the Department of Industrial Relations, there is no separate requirement for the board to participate in the SMART Governing program. No information relative to the Board of Examiners of Mine Personnel is included in the Department of Industrial Relations' SMART plans or reports.

## **FINANCIAL INFORMATION**

Fees collected by the board are deposited into the General Fund and are not available for use by the board.

### **Schedule of Fees**

	<b>FEE</b>	<b>STATUTORY AUTHORITY</b>
Examination Fee for Mine Foremen and Fire Bosses	\$20.00	<i>Code of Alabama 1975</i> , Section 25-9-10
Replacement certificate	\$1.00	<i>Code of Alabama 1975</i> , Section 25-9-13

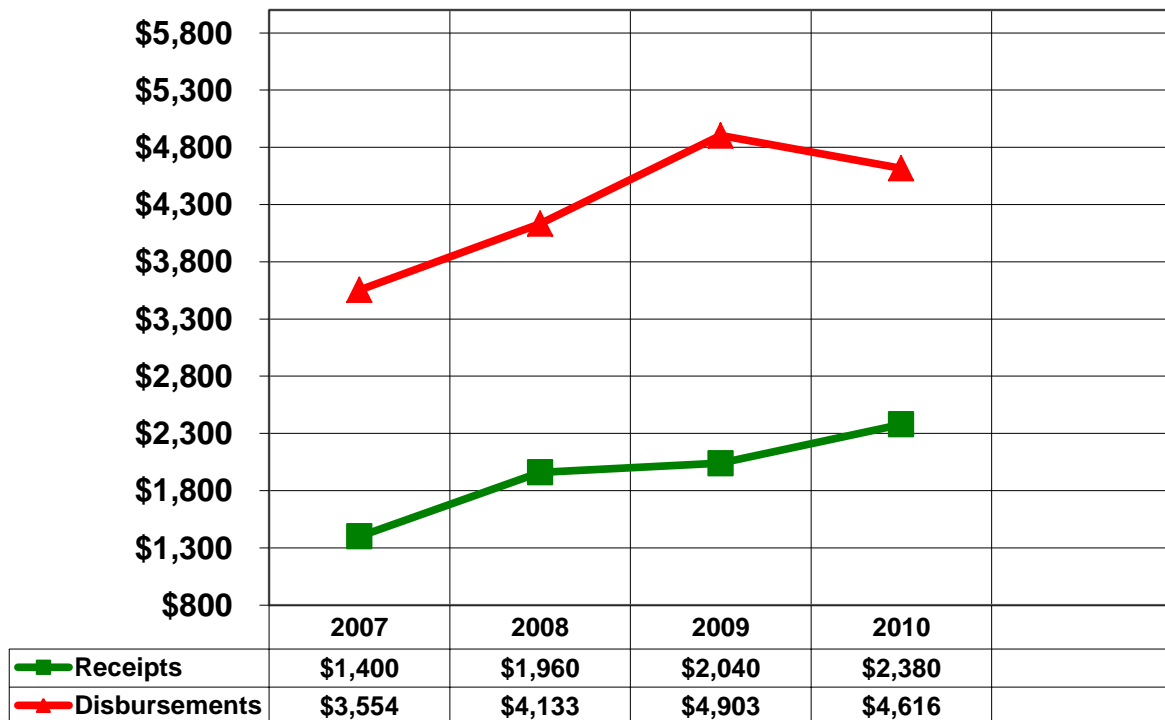
Board expenses are paid from appropriations to a General Fund account of the Department of Industrial Relations and are not limited to the amount of fees collected by the board. The following information is presented for comparison purposes.

### **Schedule of Collections and Expenses**

For the Period October 1, 2006 through September 30, 2010

	<b>FY 2010</b>	<b>FY 2009</b>	<b>FY 2008</b>	<b>FY 2007</b>
<b>Receipts</b>				
Examination Fees	<b>\$2,380.00</b>	<b>\$2,040.00</b>	<b>\$1,960.00</b>	<b>\$1,400.00</b>
<b>Disbursements</b>				
Travel Expenses	\$4,026.40	\$4,293.43	\$3,532.58	\$2,944.45
Compensation	590.00	610.00	600.00	610.00
Total Disbursements	<b>\$4,616.40</b>	<b>\$4,903.43</b>	<b>\$4,132.58</b>	<b>\$3,554.45</b>

### **Collections vs. Expenses - Chart**



## **QUESTIONNAIRES**

### **Board Member Questionnaire**

Questionnaires were sent to all eight board members. Seven responded.

#### **Question #1**

**Do you think a state program regulating mine personnel is necessary to protect the public welfare?**

<b>Yes</b>	<b>7</b>	<b>100%</b>
<b>No</b>	<b>0</b>	<b>0%</b>

**Respondent #7** – “Regulating mine personnel helps the mines to have more competent and certified workers making for a safer work place. Safer mines mean lower cost and more production keeping coal prices low. Therefore, cost of producing electricity is cheaper for the consumers.”

#### **Question #2**

**What is the most significant issue currently facing the Board of Examiners of Mine Personnel?**

**Respondent #1** – “Testing Personnel to determine that they are qualified to perform safety inspections and to direct other miners.”

**Respondent #2** – “There are no issues at this time.”

**Respondent #3** – “None.”

**Respondent #4** – “To insure that only the competent and best qualified persons receive certificates.”

**Respondent #5** – “None at this time.”

**Respondent #6** – “Addressing test structure, content and requirements to insure only qualified applicants earn a passing grade thereby insuring quality recipients of Mine Foreman/Fire boss papers”

**Respondent #7** – “We do not have any significant problems. However, we raised the grade average to 80 to pass the test, resulting in a more competent person to make a better examination of the mine.”

**Question #3**

**What is the Board doing to address this issue?**

**Respondent #1** – “Testing 2 times yearly”

**Respondent #2** – “N/A”

**Respondent #3** – “N/A”

**Respondent #4** – “Raising the passing standards and improving the test”

**Respondent #5** – “N/A”

**Respondent #6** – “Semi-annual meeting to review and discuss previous tests, results of tests, and improvements/changes needed for next exam”

**Respondent #7** – “We ask the company trainers to do a better job in training their miners to take our test.”

**Question #4**

**Do you think the Alabama law pertaining to the regulation of mine personnel is adequate? If no, please explain.**

<b>Yes</b>	<b>4</b>	<b>57%</b>
<b>No</b>	<b>3</b>	<b>43%</b>

**Respondent #4** – “It is outdated and needs to have separate test for Fire Boss and Mine Foreman certificates.”

**Respondent #5** – “All inadequacies are covered by Federal MHSA law”

**Respondent #6** – “These particular laws require administering the same identical test for both levels of certification available. An upgrade from the lesser to the higher (fire boss to mine foreman) requires retaking the same test. This seems completely illogical and should be reviewed and changed.”

**Respondent #7** – “Alabama state laws have not been changed since 1949. We need new updated laws. We are the only state that has not updated its laws after a major mine disaster Brookwood JWR No. 5 Mine 2001). 13 coal miners died.”



**Question #5**

**Do you think the Board is adequately funded to carry out its purpose? If not, please explain.**

<b>Yes</b>	<b>6</b>	<b>86%</b>
Unknown	1	14%

**Respondent #7** – “I have not seen a budget; however, we only get paid \$10.00 a day plus mileage. It does not take a lot of funding to pay the board. However, the state mine inspectors need more money to do their job correctly.”

**Certificate Holder Questionnaire**

Questionnaires were sent to 100 certificate holders. Fifteen responded. **Nineteen** questionnaires were returned as undeliverable.

**Question #1**

**Do you think a state operated program regulating the profession of mine foremen and fire bosses is necessary to protect the public welfare?**

<b>Yes</b>	<b>12</b>	<b>80%</b>
No	2	13%
Unknown	1	7%

**Question #2**

**What is the most significant issue currently facing mine personnel today?**

**Respondent #1** – “Safety”

**Respondent #2** – “Safety”

**Respondent #3** – “New miners and their training”

**Respondent #4** – “Gases in the mine, roof control and ribs, training of younger miners coming into the mines, making them aware of ALL hazards that they may encounter while working.”

**Respondent #5** – “Being made to come to work with little to no rest. Few days off makes employees complacent with their job, thereby making accidents and injuries unnecessarily more frequent.”

**Respondent #6** – “The fact that the older workforce is retiring and a younger inexperienced miner is having to take over and not having the knowledge to work as safe.”

**Respondent #7** – “Changes in laws are being influenced by legislators who have no idea of mining and miners, foreman, inspectors and others are having to deal with these changes. For example rescue chambers, or as our miners call them – ‘coffins’.”

**Respondent #8** – “MHSA targeting miners for pattern of violations and trying to shut them down.”

**Respondent #9** – “Safety and the lack of attention to the dangers involved with mining.”

**Respondent #10** – “Lack of experience, especially in the maintenance department. Lack of education or not being offered a chance to learn the in’s and out’s and do’s and don’ts of being successful in repairing and maintaining mining equipment.

**Respondent #11** – “Float dust on belt lines and/or lack of rock dust”

**Respondent #12** – “Gases, Coal dust, and Ventilation”

**Respondent #13** – “I feel that mine personnel today is more concerned about production than safety.”

**Respondent #14** – “I think mostly is the changing of generation in age. Coal miners are getting younger by the day, and as you try to train them on something, they usually get to a point where they know more than the man who trained them. I also feel there are other issues such as absentee issues, laziness, drugs, and unions.”

**Respondent #15** – “Dust and fuel exhaust”

**Question #3**

**What is the Board doing to address this issue?**

**Respondent #1** – “Having more information and more inspections to come to mines.”

**Respondent #2** – “Conducting more inspections.”

**Respondent #3** – “?”

**Respondent #4** – “Making regular inspections of all areas of mine and checking fire boss reports of hazards.”

**Respondent #5** – “?”

**Respondent #6** – “More inspection shifts and talking to us younger examiners to help us spot potential hazards.”

**Respondent #7** – “Don’t know.”

**Respondent #8** – “You tell me.”

**Respondent #9** – “?”

**Respondent #10** – “I haven’t seen a step in the right direction yet at the mine I’m employed at.”

**Respondent #11** – “It is my understanding that the State of Alabama laid off several inspectors this year. As for the Board I’m not sure.”

**Respondent #12** – “Inspections, Testing, and Meeting with Personnel.”

**Respondent #13** – “Stopping production & allowing the men to make the necessary corrections”

**Respondent #14** – “I am unsure because I am bossing out of state.”

**Respondent #15 – “?”**

**Question #4**

**Do you think the Alabama law pertaining to the regulation of mine foreman and fire bosses is adequate? If no, please explain.**

<b>Yes</b>	<b>13</b>	<b>87%</b>
No	1	6.5%
Unknown	1	6.5%

Respondent #6 – “The state should be able to levy fines for violations.”

Respondent #14 – “It is the best state given test I have received. When I passed I felt I accomplished something.”

**Question #5**

**Are you adequately informed of changes to and interpretations of board positions, policies, rules and laws concerning the practice of mine foreman and fire bosses in Alabama?**

<b>Yes</b>	<b>4</b>	<b>27%</b>
No	11	73%

**Respondent #10** – “Usually you find out the hard way by not writing something up that has changed and then you find out. There is no posting of changes or rules when they change.”

**Respondent #14** – “Again, I am bossing out of state, but when I was bossing in Alabama I was always kept informed on what was going on.”

**Question #6**

**Has any member of the Board or its staff asked you for money (other than normal fees), services or other things of value in return for certification?**

<b>Yes</b>	<b>0</b>	<b>0%</b>
No	15	100%

***Additional Comments:***

**Respondent #1** – “Very good job”

**Respondent #8** – “ The refuge chambers are of no use to saving lives, all they are for miners is a false sense of security. The younger miners are the only few that would be dumb enough to get in one. The life line is a joke, they would be the first item to be damaged in an explosion. The belt line is the most secure way out in smoke. Having miners know the escape way is the best way. The only thing the coffins (refuge chambers) would be good for is to be able to locate all of the bodies in one location. The life line is a easy citation for the MSHA!”

## *Certificate Holder Questionnaire*

**Respondent #10** – “I personally have had to sign a re-training slip on an issue where the law changed and I wasn’t aware of it until it was cited and said to be negligence on my behalf and looked bad towards me and my examination skills. When you don’t know or you are not aware of a change in laws or rules, the person making the examination should not look bad when the problem lies in lack of communication and lack of postings of changes.”

**Respondent #11** – “Being that the Alabama State Fireboss test & Mine Foreman test are the exact same test, I feel that those who hold Fireboss papers and are qualified for Mine Foreman papers should be (grandfathered in). A fee for paperwork would be suitable. It would save taxpayers money, it would also save applicants and the Board of Examiners time and money.”

**Respondent #14** – “I feel the setup Alabama has for fire bosses and foreman qualification couldn’t be better.”

**Complainant Questionnaire**

Questionnaires were sent to the only two persons who filed complaints with the board during the past four years. *No responses were received.*

## **APPENDICES**

### **Statutory Authority**

#### **§ 25-9-8. Certificate of competency for fire bosses and mine foremen--Required.**

*Current through the end of the 2010 Regular Session.*

(a) Except as otherwise provided in this chapter, no person shall act as fire boss in any coal mine in this state unless he is in possession of a certificate of competency.

(b) No person shall be employed as mine foreman in any coal mine in this state unless he is in possession of a certificate of competency as provided for in this article.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 5.)

#### **§ 25-9-9. Certificate of competency for fire bosses and mine foremen--Board of examiners.**

*Current through the end of the 2010 Regular Session.*

There shall be appointed by the Governor a board of examiners, all of whom shall be citizens of this state and hold Alabama mine foreman's certificates, consisting of the chief or the head mine inspector, as the director may designate, together with three active practical miners, three operators of coal mines, and one practicing mining engineer. The members of this board shall be appointed by the Governor and shall hold office for three years and until their successors are appointed and qualified, and, as nearly as possible, two members shall be appointed one year and three the succeeding year. No member of the board shall serve more than two consecutive terms of office. The chief or the head mine inspector shall be ex officio chairman of the board. The chairman shall vote only in the case of a tie vote, and, in the absence of one member of the board, a majority of whom shall act. In the event of the failure to have a quorum, the chairman shall have the authority to select a qualified person or persons. There shall be paid to each member of the board, except the ex officio chairman, who shall serve without extra pay, ten dollars (\$10) per day. Each board member shall also be entitled to the same per diem and travel allowance as is provided by law for state employees for each day's attendance at meetings of the board. The board of examiners shall meet every six months at the office of the chief and shall remain in session not longer than eight days, and special meetings may be called by the chairman or a majority of the members of the board. The department shall preserve in its office a record of the meetings and transactions of the board and all certificates issued and revoked.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1; Acts 1981, No. 81-201, p. 242, § 4; Acts 1984, 2nd Ex. Sess., No. 85-15, p. 17, § 1; Acts 1988, No. 88-135, p. 194, § 3; Act 2008-147, p. 238, § 3.)

**§ 25-9-10. Certificate of competency for fire bosses and mine foremen--Examinations; fees.**

*Current through the end of the 2010 Regular Session.*

The board of examiners created by Section 25-9-9 shall examine qualified applicants and give certificates of competency to persons who pass the required examinations to act as mine foremen or fire bosses in any coal mine in this state. A fee to be established by the board, not to exceed \$20.00, shall be charged for each examination given by the board, and such fee shall be paid to the Treasury of the state before the examination is begun. The examinations shall be conducted under such uniform rules, conditions, and regulations as the board shall deem most efficient for carrying into effect the spirit and intent of this chapter. Such rules, when formulated, shall be made a part of the permanent record of the board, and such of them as relate to candidates shall be published for their information and governance prior to each examination. Such rules shall be of uniform application to all candidates.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4; Acts 1981, No. 81-201, p. 242, § 4.)

**§ 25-9-11. Certificate of competency for fire bosses and mine foremen--Qualifications of applicants--Mine foreman.**

*Current through the end of the 2010 Regular Session.*

Each applicant for a mine foreman's certificate of competency shall satisfy all of the following requirements:

(1) Be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government.

(2) Be at least 23 years old.

(3) Have had four years practical mining experience or have had three years practical experience in or around coal mines and be a graduate of a school accredited by the American Association of Universities or have satisfactorily completed an associate degree program in mine technology at an approved state trade school or university.

(4) Present with his or her application an affidavit of his or her meeting the foregoing requirements and of his or her good moral character and known temperate habits, which affidavit shall be signed by three reputable citizens, at least one of whom shall be the holder of a mine foreman's certificate.

(5) Present with his or her application an affidavit that he or she is not a member of any political party or organization that advocates the overthrow of the government of the United States by force.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1; Act 2008-147, p. 238, § 3.)

**§ 25-9-12. Certificate of competency for fire bosses and mine foremen--Qualifications of applicants--Fire boss.**

*Current through the end of the 2010 Regular Session.*

Each applicant for a fire boss's certificate of competency shall meet the same qualifications as



those for a mine foreman; except that three years' practical experience in or around coal mines is substituted for the requirements of subdivision (3) of Section 25-9-11, and at least one of the persons signing the affidavit shall be holder of a fire boss's or a mine foreman's certificate.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

**§ 25-9-13. Certificate of competency for fire bosses and mine foremen--Replacement of lost certificates.**

*Current through the end of the 2010 Regular Session.*

In case of the loss or destruction of a certificate of competency, the department may supply a copy thereof to the person losing same upon the payment of \$1.00, provided that it shall be shown to the satisfaction of the department that the loss has actually occurred and that the loser was the holder of such certificate.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4.)

**§ 25-9-14. Certificate of competency for fire bosses and mine foremen--Forged or counterfeit certificates; uttering false certificates; false statements or misrepresentations in applications.**

*Current through the end of the 2010 Regular Session.*

Any person who shall forge or counterfeit a certificate or knowingly make or cause to be made any false statement in any certificate of competency provided for in this chapter or in any official copy of the same, or who shall utter or use any false certificate or unofficial copy thereof or shall make, give, utter, produce, or make use of any false declaration, representation, or statement in any such certificate or copy thereof or any document containing the same or shall make any false statement or misrepresentation in his application before the examining board for any certificate, shall be guilty of a misdemeanor, and his certificate shall be cancelled or annulled by the examining board.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4.)

**§ 25-9-15. Certificate of competency for fire bosses and mine foremen--Suspension, cancellation, or revocation; voluntary surrender of certificate**

*Current through the end of the 2010 Regular Session.*

(a) The board may issue an official written reprimand of any person certified under this chapter as a disciplinary measure for a first violation of any requirement of this chapter.

(b) In addition, for any subsequent violation or for any serious first violation, the certificate of any person may be cancelled or revoked by the board of examiners, whenever it shall be established to the satisfaction of the board that the holder of the certificate has become unworthy of official endorsement by reason of violation of this chapter, intemperate habits, manifest incapacity, abuse of authority, or for other causes satisfactory to the board. Any person against whom charges are made shall have an opportunity to be heard in his or her own behalf. He or she shall have at least 30 days' notice in writing of the charges by the ex officio chairman, and, if the holder of a certificate is convicted on the hearing of the charge of violating any part of this chapter, his or her certificate shall be revoked by the board. The director, after a thorough investigation, may suspend the holder pending a meeting of the

board of examiners and its final action.

(c) In addition to the reasons specified in subsection (b) for revocation of a certificate, a certificate holder may voluntarily surrender his or her certificate upon written request to the board for any reason acceptable to the board, and subsequent approval by the board. Pursuant to administrative rule, the board shall specify those reasons that are acceptable to the board for the voluntary surrender of a certificate.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 4; Acts 1988, No. 88-135, p. 194, § 3; Act 2004-72, p. 88, § 3.)

#### **§ 25-9-16. Failure of fire boss to perform required duties.**

*Current through the end of the 2010 Regular Session.*

Any fire boss in a mine who fails to perform any duty imposed on him by the laws of this state as fire boss shall be guilty of a misdemeanor.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 5; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

#### **§ 25-9-17. Persons authorized to act as fire boss; temporary fire boss or mine foreman.**

*Current through the end of the 2010 Regular Session.*

Except as otherwise provided in this chapter, no person shall act as fire boss in any coal mine in this state unless he is in possession of a certificate of competency. Anyone holding a mine foreman's certificate of competency may serve as fire boss. Whenever any exigency arises by which it is impossible for any operator, owner, or lessee to secure the immediate service of a certified mine foreman or fire boss, he may employ a person who has the same qualifications by experience, concurred in by the chief or mine inspector delegated by the chief, to act as temporary mine foreman or fire boss for a period not to exceed 15 days. The requirements for a temporary mine foreman or fire boss shall be no more severe than those contained in federal regulations.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 5; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

#### **§ 25-9-18. Qualifications of mine foremen in underground mines.**

*Current through the end of the 2010 Regular Session.*

No person shall be employed as mine foreman in any underground coal mine in this state unless he is in possession of a certificate of competency as provided for in this chapter.

CREDIT(S)

(Acts 1949, No. 207, p. 242, § 5; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

## Board Members



Robert Bentley  
Governor

STATE OF ALABAMA  
DEPARTMENT OF INDUSTRIAL RELATIONS


April 12, 2011



G. Thomas Surtees  
Director

### MEMORANDUM

TO: Examiners of Public Accounts

FROM: Larry N. McCarty  
Ex-Officio Chairman 

SUBJECT: Board of Examiners of Mine Personnel

<u>Name &amp; Position</u>	<u>Date Appointed</u>	<u>Term Expires</u>
Larry N. McCarty Ex-Officio Chm. Bham., AL		Indefinite
Walt Owens Practical Miner Centreville, AL	3-0-2009	2-20-2012
Johnny Humphreys Mining Engineer Bessemer, AL	7-12-2010	2-20-2013
Jimmy L. Yates Practical Miner McCalla, AL	7-12-2010	2-20-2013
Greg Franklin Operator Northport, AL	7-12-2010	2-20-2013
Gary E. Jolly Practical Miner Northport, AL	6-25-2008	2-20-2011*
John Redmill Operator Jasper, AL	3-1-2010	2-20-2012
Ted Sartain Operator Winfield, AL	6-25-2008	2-20-2011*

\* Sent letter to Governor on January 13, 2011 asking for reappointment.

MINING AND RECLAMATION DIVISION MINE SAFETY AND INSPECTION LARRY N. McCARTY, CHIEF  
11 WEST OXMOOR ROAD SUITE 201 BIRMINGHAM, ALABAMA 35209  
Telephone: (205) 944-1075 Fax: (205) 944-1078



## **BOARD RESPONSE TO SIGNIFICANT ISSUES**

Dear Mr. Norris:

This e-mail is in response to your request for information regarding the “significant issues” listed in your correspondence dated July 8, 2011.

Response to 2011-01

Part 1: Several board members thought that the question was pertaining to all coal miners in general with reference to the “*Coal Mining Laws of the State of Alabama*” and not specifically the Board of Examiners of Mine Personnel. Lawmakers, mine operators, and mine workers would likely initiate and address any needed changes to current mining laws.

Part 2: A legal revision request to the “*Coal Mining Laws of the State of Alabama*” (25-9-11(6)) addresses specifically the issue concerning existing identical testing requirements for mine foreman and fire boss. Said revision request (25-9-11(6)) states that “an applicant with a State of Alabama fire boss certificate of competency with sufficient underground mining experience to qualify for a mine foreman certificate shall apply to the Board of Examiners at least thirty (30) days before scheduled test date. Applicant shall be required to appear before the Board of Examiners with a completed affidavit. Interview shall consist of oral questions regarding the duties and responsibilities of a mine foreman. With a majority vote of the Board of Examiners, applicant will not be required to take mine foreman/fire boss test again to be certified. Without a majority vote of the Board of Examiners, applicant shall have the opportunity to take mine foreman/fire boss test, to receive a mine foreman certificate of competency.” As of 07-21-11, this revision request is currently filed with the Legislature Reference Service.

#### Response to 2008-02

The Board of Examiners of Mine Personnel agreed on April 2, 2008 to include in administrative rules a description of acceptable conditions for the voluntary surrender of a certificate. The proposed rule states that “A mine foreman or fire boss should submit a written request to the Board for a voluntary surrender of a certificate for mental and/or physical reasons and must meet before the Board for subsequent approval.” As of 07-21-11, this rule request is currently being formatted to file with the Legislative Reference Service.

#### Response to 2008-04

Board meetings and testing information are listed on the Secretary of State’s web site. Testing information is also sent to all underground coal mines and trainers. The Board of Examiners, created by Section 25-9-9 of the *Coal Mining Laws of the State of Alabama*, has mandated duties requiring only limited contact with mine personnel. These duties include testing qualified applicants and issuing certificates of competency to persons who pass the required examinations to act as mine foremen or fire bosses in Alabama coal mines. The Board may also issue written reprimands or revoke the certification of any person for a violation of any requirement of the coal mining laws. The Board has also approved procedures to accept the voluntary surrender of certifications. Other than for specified circumstances mentioned above, there remains no requirement for contact of certificate holders after initial issuance of a certificate.